

## PUTTING LEGAL WRITING ON THE TENURE TRACK: ONE SCHOOL'S EXPERIENCE

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### *Abstract*

*This Article discusses the statistics behind the gendered segregation of law school faculties, in which women occupy a disproportionate number of legal writing and other low-status positions, while men continue to hold a disproportionate number of tenured faculty positions. The Article explores the rationales for and against converting legal writing faculty to tenure-track, and shares one law school's experience of doing so. The Article then suggests lessons and approaches that other schools may wish to take in converting their own legal writing faculty to tenure-track positions.*

### INTRODUCTION

Law school faculties have a gender disparity problem. Tenured and tenure-track faculty members, who typically have better job security and higher pay, are disproportionately male, while legal writing faculties, who generally have less job security and less pay, are disproportionately female. One way to reconcile this gendered imbalance of status, security, and pay is for law schools to convert legal writing faculty to tenured and tenure-track status.<sup>1</sup> This Article discusses the statistics behind the gendered segregation of law school faculties (Part I), and explores the rationales for and against converting legal writing faculty to tenure-track (Part II). The Article then shares one law school's experience of converting legal writing faculty to tenure-track (Part III), suggesting approaches that other

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1 Apart from addressing gender disparity, the case for converting legal writing faculty positions to the tenure track is a strong one. *See infra* text accompanying notes 34–49.

schools may wish to take in converting their own legal writing faculty to tenure-track positions (Part IV).

### I. Gendered Roles Within Law Faculties

Women have been historically underrepresented on law school faculties,<sup>2</sup> and distressingly, the problem persists despite awareness. Numerous studies and articles document the painfully slow rise in the number and status of female law faculty, and the segregation of female faculty to specific courses.<sup>3</sup> Lamentations about how few women serve on law faculties have been made since at least the 1970s.<sup>4</sup>

Nationally, women remain a minority on law school faculties,<sup>5</sup> and the women who are present are often segregated (or more provocatively, “ghettoized”)<sup>6</sup> into the “women’s

2 Jo Anne Durako, *Second-Class Citizens in the Pink Ghetto: Gender Bias in Legal Writing*, 50 J. LEGAL EDUC. 562, 564 (2000).

3 E.g., Marjorie E. Kornhauser, *Rooms of Their Own: An Empirical Study of Occupational Segregation by Gender Among Law Professors*, 73 UMKC L. REV. 293 (2004); Debra Branch McBrier, *Gender and Career Dynamics Within a Segmented Professional Labor Market: The Case of Law Academia*, 81 SOC. FORCES 1201 (2003); Deborah Jones Merritt & Barbara F. Reskin, *Sex, Race, and Credentials: The Truth About Affirmative Action in Law Faculty Hiring*, 97 COLUM. L. REV. 199 (1997); Kathryn M. Stanchi, *Who Next, the Janitors? A Socio-Feminist Critique of the Status and Hierarchy of Law Professors*, 73 UMKC L. REV. 467 (2004).

4 See, e.g., D. Kelly Weisberg, *Women in Law School Teaching: Problems and Progress*, 30 J. LEGAL EDUC. 226 (1979). Weisberg notes that in the 1970s, many prominent female law professors were recruited by other law schools, resulting in no net increase in the number of women on law faculties. *Id.* at 238. This poaching may reflect the trend identified by McKinsey & Company that employment decisions for men are often based on potential, while employment decisions for women are often based on track record. JOANNA BARSH & LAREINA YEE, SPECIAL REPORT: UNLOCKING THE FULL POTENTIAL OF WOMEN IN THE U.S. ECONOMY 6 (McKinsey & Company 2011), [http://www.mckinsey.com/Client\\_Service/Organization/Latest\\_thinking/Unlocking\\_the\\_full\\_potential.aspx](http://www.mckinsey.com/Client_Service/Organization/Latest_thinking/Unlocking_the_full_potential.aspx) [http://perma.cc/X635-VQ9H]. See also Katherine Barnes & Elizabeth Mertz, *Is It Fair? Law Professors’ Perceptions of Tenure*, 61 J. LEGAL EDUC. 511, 523–24 (2011).

5 It should go without saying that other groups are also underrepresented on law school faculties: racial and ethnic minorities, LGBT faculty, professors with disabilities, and more. See AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUCATION AND ADMISSION TO THE BAR, AM. BAR ASS’N, TOTAL STAFF & FACULTY MEMBERS 2012–2013 (2013), [http://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/statistics/2012\\_2013\\_faculty\\_by\\_gender\\_ethnicity.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/2012_2013_faculty_by_gender_ethnicity.authcheckdam.pdf) [http://perma.cc/ZL8E-DVRA]. Changes and corrections must be made in this regard, so that law school faculties better represent the diversity of the student body and the country as a whole. Regrettably, a longer discussion of these other forms of diversity is beyond the scope of this Article.

6 McBrier, *supra* note 3, at 1202. See generally Durako, *supra* note 2.

work”<sup>7</sup> of law schools: clinicians, librarians, and legal writing faculty.<sup>8</sup> This assertion is supported by current data from the American Bar Association<sup>9</sup>:

**Table 1**  
**Full Time Teaching Resources:**

	Female	Male	Total
Tenured	1721 (31.9%)	3678 (68.1%)	5399
Tenure-Track	792 (48.5%)	841 (51.5%)	1633
405(c)	1010 (63.5%)	581 (36.5%)	1591
Visitors	135 (38.9%)	212 (61.1%)	347
All Full-Time	3658 (40.8%)	5312 (59.2%)	8970

**Other Teaching Resources:**

	Female	Male	Total
Full-Time Skills	151 (64.8%)	82 (35.2%)	233
Full-Time Writing	163 (72.1%)	63 (27.9%)	226
Other Full-Time	474 (54.6%)	394 (45.4%)	868
Part-Time	2757 (32.3%)	5790 (67.7%)	8547

**Administrators:**

	Female	Male	Total
Dean	54 (25.6%)	157 (74.4%)	211
Associate or Vice Dean	957 (57.4%)	710 (42.6%)	1667
Assistant Dean/Director	9078 (68.8%)	4115 (31.2%)	13193

While it is heartening that the tenure-track faculty is nearly half women and half men, women continue to make up a disproportionately large share of 405(c) status,<sup>10</sup> “full-time

<sup>7</sup> McBrier, *supra* note 3, at 1244.

<sup>8</sup> See also Durako, *supra* note 2, at 585–86.

<sup>9</sup> Compiled from the American Bar Association, *supra* note 5. Data about full-time professional librarians, as well as the racial/ethnic makeup of law faculties, is available from the ABA report but has not been reproduced here.

<sup>10</sup> The American Bar Association, which provides accreditation for American law schools, sets forth “Standards and Rules of Procedure for Approval of Law Schools,” that is, a set of requirements a law school must meet in order to be recognized as an accredited school. Chapter 4 of this document sets out requirements for faculty, and Standard 405(c) contemplates an employment status “similar to tenure.” AM. BAR ASS’N, REVISED STANDARDS AND RULES OF PROCEDURAL FOR APPROVAL OF LAW SCHOOLS 29 (2014–2015), [http://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/council\\_reports\\_and\\_resolutions/201406\\_revised\\_standards\\_clean\\_copy.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/201406_revised_standards_clean_copy.authcheckdam.pdf) [http://perma.cc/K62R-N4LD] [hereinafter ABA, 2014 REVISED STANDARDS AND RULES]. Many clinical and legal writing faculty have employment contracts that meet this Standard but not the guidelines for tenure. See also *infra* text

skills,” “full-time writing,” and “other full-time” positions.<sup>11</sup> Women also comprise a small proportion of deans, but outsized proportions of the housekeeping roles of associate or vice deans, assistant deans, and directors. Hiring women but keeping them low-status does not solve the problem of gender bias.<sup>12</sup>

Legal writing, along with clinical and librarian roles, remain lower-status<sup>13</sup> as compared to so-called “doctrinal” (or “casebook” or “podium”) professors.<sup>14</sup> Low status correlates with low pay, lesser titles, and other indicia of inferiority.<sup>15</sup> Gender disparity exists even among legal writing faculty: among directors of legal writing programs, “being a man means earning a substantially higher salary and enjoying a better status [than a woman in a comparable position] . . . .”<sup>16</sup>

Some theorize that women are steered (or relegated) to legal writing because of conscious or unconscious biases about the role and ability of women.<sup>17</sup> Fortunately, we are past the days when a male faculty member can flatly say of a female faculty candidate, “I can’t work with someone that ugly,”<sup>18</sup> but biases that remain are subtler.<sup>19</sup> For example,

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accompanying notes 29–33. The phrase “405(c) status” has become shorthand among legal academics for this employment status.

11 I find it inherently frustrating that the American Bar Association classifies “full-time skills,” “full-time writing,” and “other full-time” under the heading “Other Teaching Resources.” Why do these categories not belong under the heading “Full Time Teaching Resources” if they are, by definition, full time? *See supra* Table 1.

12 *See* Weisberg, *supra* note 4, at 243 (“These are nowhere jobs which are one way of saying, of course we hire women here.”) (internal quotation marks omitted).

13 Richard K. Neumann, Jr., *Women in Legal Education: What the Statistics Show*, 50 J. LEGAL EDUC. 313, 347 (2000). The gender imbalance among clinicians and librarians is troubling for all the same reasons it is troubling among legal writing faculty; this Article, however, is limited to discussion of legal writing faculty. I hope that future work will analyze the issues raised here in connection with clinical and librarian faculty.

14 *See* Kent D. Syverud, *The Caste System and Best Practices in Legal Education*, 1 J. ASS’N LEGAL WRITING DIRS. 12, 14 (2001) (characterizing a caste system among law school faculty in which tenured and tenure-track faculty “are the Brahmins” and legal writing faculty “are lower caste”). The notion that lawyering skills are somehow divorced from underlying knowledge of the law is, of course, false.

15 *See* Durako, *supra* note 2, at 581.

16 Durako, *supra* note 2, at 565–66.

17 *See, e.g.,* Neumann, *supra* note 13, at 350–51.

18 Weisberg, *supra* note 4, at 242.

19 Neumann, *supra* note 13, at 350–51.

there is an expectation widely held among faculties (and students)<sup>20</sup> that legal writing requires a nurturing relationship between faculty and student, and that women are best suited for that kind of work.<sup>21</sup>

The subtlety of this bias makes it harder to identify and disrupt, yet it must be disrupted. Among other reasons, keeping female faculty segregated from male, and keeping them in lower-status roles at the law school, sends obvious signals to the student body about the role, contribution, and value of women in the law school and the legal system as a whole.<sup>22</sup>

## II. Rationales For and Against Legal Writing as Tenure-Track

Historically, legal writing has not been a tenure-track faculty position for various reasons. One reason is plain discrimination, as discussed in Part I, above. Another explanation has been couched in free-market terms: if legal writing faculty members are *willing* to work for less pay and less status, law schools would be irrational to pay them more.<sup>23</sup>

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20 Student expectations are reflected in the evaluations they submit at the end of a semester. Female professors are often judged on their interpersonal skills, while male professors are often judged on their intelligence. Kornhauser, *supra* note 3, at 326; Neumann, *supra* note 13, at 350. *See also* William Huntsberry, *How We Talk About Our Teachers*, MORNING EDITION, NPR (Feb. 23, 2015, 5:02 AM), <http://www.npr.org/blogs/ed/2015/02/23/386001328/how-we-talk-about-our-teachers> [<http://perma.cc/3W8G-G6Y5>]; Claire Cain Miller, *Is the Professor Bossy or Brilliant? Much Depends on Gender*, N.Y. TIMES (Feb. 6, 2015), [http://www.nytimes.com/2015/02/07/upshot/is-the-professor-bossy-or-brilliant-much-depends-on-gender.html?\\_r=0](http://www.nytimes.com/2015/02/07/upshot/is-the-professor-bossy-or-brilliant-much-depends-on-gender.html?_r=0) [<http://perma.cc/H8L3-HVHB>].

21 *See* Neumann, *supra* note 13, at 350.

22 It is possible that students do not appreciate the differences between faculty statuses; I didn't when I was a law student. But in Texas, and likely in other states as well, many public employees' salaries are public information, including faculty at some public universities. It must be sought out—it's not posted on the law school door—but some state salaries in Texas are easily found, searched, and compared. *See Government Salaries Explorer*, TEX. TRIBUNE, <http://salaries.texastribune.org> [<http://perma.cc/88NT-6W73>] (As of this writing, Texas Tech University School of Law salaries are not posted, but they have been in the past. *See About the Data*, TEX. TRIBUNE, <http://salaries.texastribune.org/about> [<http://perma.cc/9JVZ-UL3W>].) One of my Texas Tech colleagues reports that prior to our conversion to tenure-track status, she was frequently approached by students who wanted to discuss why her employment status and salary differed from those of their other first-year professors.

23 Marina Angel, *The Glass Ceiling for Women in Legal Education: Contract Positions and the Death of Tenure*, 50 J. LEGAL EDUC. 1, 5 (2000) (noting that law schools "have discovered they can get women with excellent credentials to teach legal research and writing full time in non-tenure-track positions"). *See also id.* at 8 ("[L]aw schools had discovered, and quickly taken advantage of, a cheap and highly skilled group of teachers—women."). Evidence suggests, however, that men in legal writing positions are paid more, have more

Some law schools have (or used to have) adjunct-driven legal writing instruction.<sup>24</sup> Another economic consideration for such law schools instituting dedicated legal writing faculty is the financial difficulty inherent in hiring multiple new full-time employees without dedicated faculty lines.<sup>25</sup>

Another argument against tenure-track legal writing positions deals with written scholarship. Tenure exists largely to protect a professor's academic freedom, which includes written scholarship.<sup>26</sup> With tenure, a professor is able to research and advocate for politically unpopular positions without the threat of being fired.<sup>27</sup> Most legal writing faculty members are not required to produce written scholarship,<sup>28</sup> so the protection of tenure for this kind of academic freedom is unnecessary. This may, however, be a chicken-and-egg situation: do legal writing faculty members not need tenure because they don't produce scholarship, or do they not produce scholarship because they aren't eligible for tenure? Presumably, legal writing professors whose job descriptions include scholarship expectations would publish.

Most legal writing faculty currently have status and job security less than tenured or tenure-track status: while approximately 16% of legal writing faculty are tenured or tenure-track, approximately 31% are 405(c) or 405(c)-track, and the remaining 53% have employment contracts of one, two, three, or more years.<sup>29</sup> ABA Standard 405(d) sets out the minimum employment protections for legal writing faculty, requiring that they merely have "such security of position and other rights and privileges of faculty membership

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prestigious titles, have greater voting rights, and are promoted to doctrinal faculty positions at higher rates than similarly situated women. *See id.* at 7; Durako, *supra* note 2, at 565–66; McBrier, *supra* note 3, at 1240.

24 *See* Angel, *supra* note 23, at 5.

25 I am grateful to Darby Dickerson for this insight.

26 Ronald G. Ehrenberg, *American Law Schools in a Time of Transition*, 63 J. LEGAL EDUC. 98, 103 (2013). Tenure also "facilitates the intergenerational transmission and expansion of knowledge" and provides an incentive for faculty to work harder in order to earn it. *Id.*

27 *Id.*

28 ASS'N OF LEGAL WRITING DIRS., REPORT OF THE ANNUAL LEGAL WRITING SURVEY 81 (2014), <http://www.alwd.org/wp-content/uploads/2014/07/2014-Survey-Report-Final.pdf> [<http://perma.cc/C3AL-6QAP>] (41 survey responders report that LRW faculty are "required" to produce scholarship, while 58 responders report that LRW faculty are "expected" to produce scholarship and 117 responders report that LRW faculty are "encouraged" to produce scholarship).

29 *Id.* at 64. (These figures exclude the directors of legal writing programs.)

as may be necessary to (1) attract and retain a faculty that is well qualified to provide legal writing instruction . . . and (2) safeguard academic freedom.”<sup>30</sup> By comparison, standard 405(c) requires law schools to provide clinical faculty with “a form of security of position *reasonably similar* to tenure[.]”<sup>31</sup> Clearly, “such security of position . . . as may be necessary” and “reasonably similar to tenure” are not the same as tenure,<sup>32</sup> and those without tenure suffer from the denial.<sup>33</sup>

On the other hand, credible arguments suggest that legal writing should be a fully tenure-track position.

Tenure confers more than job security; it also confers voting rights for faculty members to shape the law school’s policies, hiring, and governance.<sup>34</sup> Some but not all legal writing faculty nationwide have voting rights on faculty governance matters, and even those who do have voting rights may not have full voting rights equivalent to those of their tenured and tenure-track colleagues.<sup>35</sup> Certainly, legal writing faculty should be full participants in law school and faculty governance. Legal writing professors have the same ability as doctrinal professors to assess the needs of the institution and attempt to better the educational experiences of the students—these faculty work in the building, interacting with students, other faculty, and staff, and may even have better insights into student needs and wants given the close relationship they often develop with students. By contrast, failing to give tenure to legal writing faculty members restricts their ability to participate in the development and evolution of the institution where they work.<sup>36</sup>

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30 ABA, 2014 REVISED STANDARDS AND RULES, *supra* note 10, at 29.

31 ABA, 2014 REVISED STANDARDS AND RULES, *supra* note 10, at 29 (emphasis added).

32 ABA, 2014 REVISED STANDARDS AND RULES, *supra* note 10, at app. 1.

33 *See, e.g.*, Letter from Robert A. Gorman & Elliott S. Milstein to Solomon Oliver, Jr. et al. (Dec. 4, 2013), [http://www.aals.org/wp-content/uploads/2014/08/201312\\_comment\\_ch\\_4\\_robert\\_gorman\\_elliott\\_milstein\\_authcheckdam1.pdf](http://www.aals.org/wp-content/uploads/2014/08/201312_comment_ch_4_robert_gorman_elliott_milstein_authcheckdam1.pdf) [<http://perma.cc/BM54-VCS8>] (strongly opposing an ABA proposal to reduce doctrinal faculty status from “tenure” to 405(c) “security of position”).

34 Barnes & Mertz, *supra* note 4, at 511.

35 *See ASS’N OF LEGAL WRITING DIRS.*, *supra* note 28, at 83 (25% of survey respondents indicate that legal writing faculty vote on all matters at faculty meetings; 47% vote on all matters except hiring, promotion, or tenure; 18% attend faculty meetings but are prohibited from voting on anything; while 8% *are not even permitted to attend faculty meetings*).

36 *See Barnes & Mertz*, *supra* note 4, at 511.



Tenure is also a mark of achievement and respect. Denying legal writing faculty even the opportunity to obtain tenure sends the message to the students that legal writing, despite being required for graduation<sup>37</sup> (to say nothing of being a fundamental skill required for the daily practice of law), is a less important skill set and course than other classes offered at the law school. It also suggests that the people teaching legal writing—mostly women—are less important than those teaching other subjects.<sup>38</sup>

This is certainly untrue; legal writing is a crucial part of a law student's education. Indeed, the American Bar Association requires an accredited law school's curriculum to contain only three things: a professional responsibility course, an experiential learning course, and writing experiences.<sup>39</sup> Constitutional Law and Torts are not required, but legal writing is.<sup>40</sup>

Legal research and writing courses are also some of the most pedagogically sound educational experiences in the law school. The best practices in legal education include student-faculty contact, cooperation among students, active learning, prompt and frequent feedback, effective time management, high expectations, and respect for diverse talents and diverse ways of learning.<sup>41</sup> All law school courses promote high expectations and time management, but legal writing courses excel in the other best practice areas, with small classes and multiple real-world simulations.<sup>42</sup> Multiple drafts of multiple writing assignments<sup>43</sup> provide students with better feedback than a single exam, which is typically

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37 Law schools require an average of 5.71 credits of legal writing instruction during the first year of law school. ASS'N OF LEGAL WRITING DIRS., *supra* note 28, at 7. This average has been slowly increasing over time, indicating the importance of the skill set taught in legal writing courses and the investment of student time required to become competent.

38 Durako, *supra* note 2, at 585 (noting that when legal writing faculty members are “second- or third-class citizens[], students make value judgments about the importance of the people who teach them and about the skills they learn in writing classes”); Kornhauser, *supra* note 3, at 326 (noting that female students may be discouraged by role models presented in segregated positions).

39 ABA, 2014 REVISED STANDARDS AND RULES, *supra* note 10, at 16.

40 It is perhaps ironic, then, that many “assum[e] that any lawyer can teach legal writing[,]” while not any lawyer can teach doctrinal subjects. Durako, *supra* note 2, at 584.

41 Syverud, *supra* note 14, at 16–17 (citing Gerald F. Hess, *Seven Principles for Good Practice in Legal Education: History and Overview*, 49 J. LEGAL EDUC. 367 (1999)).

42 See Stanchi, *supra* note 3, at 493–94.

43 See ASS'N OF LEGAL WRITING DIRS., *supra* note 28, at 16–17.



not graded or returned until weeks or months have passed.<sup>44</sup> Legal writing class time is spent in a diverse array of teaching activities, including lecture, demonstrations, group or individual in-class exercises, in-class writing, Q & A, class discussion, and more.<sup>45</sup> (As student bodies continue to diversify, so too should legal education methods;<sup>46</sup> legal writing courses model many different educational methods.) Consistent with recognition of these best practices, the American Bar Association continues to push law schools to incorporate more writing and experiential learning into the curriculum.<sup>47</sup>

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44 As every professor knows, few students seek feedback on final exams, probably because the course is over and there is little gratification for a student reviewing an exam that cannot be revised or resubmitted.

45 See ASS'N OF LEGAL WRITING DIRS., *supra* note 28, at 14–15.

46 See Meera E. Deo, Maria Woodruff & Rican Vue, *Paint by Number? How the Race and Gender of Law School Faculty Affect the First-Year Curriculum*, 29 CHICANA/O-LATINA/O L. REV. 1, 23 (2010) (“[T]he Socratic Method is designed, if anything, to stifle discussion rather than invigorate it . . .”); Stanchi, *supra* note 3, at 491 (“Feminist and other critical legal theorists have long criticized law school pedagogy as hierarchical, inconsistent with educational goals, and alienating to outsiders.”).

47 The previous ABA curriculum standards contained an extensive list of items that must be covered by a law school curriculum, requiring:

substantial instruction in:

- (1) the substantive law generally regarded as necessary to effective and responsible participation in the legal profession;
- (2) legal analysis and reasoning, legal research, problem solving, and oral communication;
- (3) writing in a legal context, including at least one rigorous writing experience in the first year and at least one additional rigorous writing experience after the first year;
- (4) other professional skills generally regarded as necessary for effective and responsible participation in the legal profession; and
- (5) the history, goals, structure, values, rules and responsibilities of the legal profession and its members.

AM. BAR ASS'N, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 21 (2013–2014). The current standard, however, is significantly streamlined, demonstrating an evolving emphasis on skills and experiential learning. The current standard requires only three items:

each student [is required] to . . . complete at least the following:

- (1) one course of at least two credit hours in professional responsibility . . .
- (2) one writing experience in the first year and at least one additional writing experience after the first year, both of which are faculty supervised; and
- (3) one or more experiential course(s) totaling at least six credit hours. An experiential course must be a simulation course, a law clinic, or a field placement. . . .

ABA, 2014 REVISED STANDARDS AND RULES, *supra* note 10, at 16.

Lastly, the converse of the free-market argument above is that increasing the status and pay of a legal writing faculty position will allow a law school to attract and retain better candidates.<sup>48</sup> Teaching legal writing requires specialized knowledge, and specialists should teach it.<sup>49</sup> Tenured and tenure-track legal writing positions will allow law schools to hire and keep the best possible faculty for this essential part of the curriculum.

### III. One School's Experience

In the fall of 2013, the faculty of Texas Tech University School of Law voted overwhelmingly to convert the existing 405(c) legal writing faculty slots to tenure-track positions. All legal writing faculty at Texas Tech now have the same salary opportunities,<sup>50</sup> the same voting rights, and the same tenure standards as the doctrinal faculty. The only thing that differentiates legal writing faculty is the courses we happen to be assigned to teach. I was a visiting professor of legal skills at the Law School during this time of conversion, and I now hold one of the tenure-track positions.

I believe this successful conversion is the result of many stars aligning. What follows is my attempt to identify those stars, and Part IV of this Article will attempt to extract characteristics of this conversion that may be applicable to other legal writing programs. I have attempted to represent a collective experience, however, which may be an impossible task. Individual impressions and recollections may vary, but I hope I have faithfully captured the basic facts of the progression and the general feelings of the faculty along the way.

This conversion to tenure-track status had its roots in the school's 2001 decision to formalize a previously existing legal research and writing program called Legal Practice. In 2001, the Legal Practice faculty positions, which had been full-time positions with benefits, were converted to a program with four 405(c)-status professors and a tenure-track director who would also teach in the program.<sup>51</sup> The conversion to 405(c) status and establishment

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48 Durako, *supra* note 2, at 584.

49 Durako, *supra* note 2, at 584. Suggestions are sometimes made that anyone with a J.D. can teach legal writing, an assumption that is not made with other law school courses; it is unclear why expertise should be required to teach Torts but not legal research and writing. *See* Durako, *supra* note 2, at 584.

50 Some natural variations in salary may still exist due to differences in seniority and merit raises. I am grateful to Brian D. Shannon for this insight.

51 Texas Tech University School of Law Ad Hoc Governance Committee, Proposal to Convert the Legal Practice/405(c) Positions to the Tenure Track (on file with author) [hereinafter Governance Committee

of the tenure-track director position was discussed and debated thoroughly at the time.<sup>52</sup> Turnover among legal writing faculty prior to 2001 had been frequent, and the faculty as a whole realized that improving status and pay of legal writing faculty would allow the Law School to recruit and retain better legal writing faculty and assure compliance with evolving ABA Standards.<sup>53</sup>

The law school hired a respected and experienced professor as its first permanent tenure-track director, Nancy J. Soonpaa.<sup>54</sup> Professor Soonpaa immediately became an effective advocate for the Legal Practice program, lobbying the dean's office frequently for more resources and more hiring.<sup>55</sup> Following the grant of 405(c) status in 2001, the other (non-director) Legal Practice personnel turnover fell considerably.<sup>56</sup> The tenured and tenure-track faculty came to appreciate the improved quality of the instruction given by full-time, professional legal writing professors.<sup>57</sup>

The law school was proud to be at the forefront of legal research and writing education.<sup>58</sup> Student evaluations of the legal writing course and faculty improved.<sup>59</sup> In

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Proposal]; interview with Brian D. Shannon, Paul Whitfield Horn Professor of Law, Texas Tech University School of Law, in Lubbock, Tex. (May 1, 2015) [hereinafter Shannon interview]; interview with Nancy J. Soonpaa, Professor of Law and Director of the Legal Practice Program, Texas Tech University School of Law, in Lubbock, Tex. (May 1, 2015) [hereinafter Soonpaa interview].

52 Shannon interview, *supra* note 51; interview with Dean G. Pawlowic, Professor of Law, Texas Tech University School of Law, in Lubbock, Tex. (Mar. 5, 2015) [hereinafter Pawlowic interview]. There is, perhaps naturally, some variation in how faculty members recall the tenor of these discussions; at least one faculty member recalls "contentious" conversations, while another dismisses that characterization and recalls "good, robust debates." Regardless, my sense today is that the entire faculty takes pride in the flourishing Legal Practice program.

53 Pawlowic interview, *supra* note 52; Shannon interview, *supra* note 51.

54 Shannon interview, *supra* note 51. Director Soonpaa later earned tenure, served for a period as an associate dean, and continues to serve as the program director. Shannon interview, *supra* note 51.

55 Shannon interview, *supra* note 51.

56 Pawlowic interview, *supra* note 52.

57 Pawlowic interview, *supra* note 52.

58 Pawlowic interview, *supra* note 52.

59 Pawlowic interview, *supra* note 52. Prior to 2001, student evaluations of Legal Practice had been low enough that the faculty had concluded that legal writing courses naturally received lower student evaluations. Soonpaa interview, *supra* note 51.

2010, the Legal Practice program was ranked as the eighteenth best legal research and writing department by *U.S. News and World Report*,<sup>60</sup> and the department also received the Departmental Teaching Excellence Award from Texas Tech University's Teaching Academy, a university-wide program.<sup>61</sup> The law school faculty quickly grew to value the quality of the legal writing program that was made possible by the improvement in the status of the legal writing faculty.<sup>62</sup> This appreciation, combined with the sense of pride the faculty felt for being at the vanguard of legal writing instruction, created a faculty primed to further improve the status of the legal writing faculty.<sup>63</sup>

As more law schools moved to make their legal writing faculty 405(c) status, Texas Tech became less rare in this regard.<sup>64</sup> As Texas Tech's two-semester, six-credit legal writing course also became the norm at law schools around the country,<sup>65</sup> the faculty were eager to discuss the next step in status equality.

The conversion from 405(c) status to tenure-track was driven by the program director, Nancy Soonpaa, and the law school dean, Darby Dickerson.<sup>66</sup> Professor Soonpaa had long advocated for such conversion, but the university administration had previously been

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60 TEX. TECH UNIV. SCHOOL OF LAW, *News from our Legal Practice Program*, <http://www.law.ttu.edu/acp/programs/legal/legalwriting2014.pdf> [<http://perma.cc/XD6A-3WUN>].

61 *Id.* See also *Texas Tech's Legal Practice Program gets a big check!*, LEGAL WRITING PROF. BLOG (May 7, 2010), <http://lawprofessors.typepad.com/legalwriting/2010/05/texas-techs-legal-practice-program-gets-a-big-check.html> [<http://perma.cc/W9BX-W3HB>].

62 Pawlowic interview, *supra* note 52; Shannon interview, *supra* note 51.

63 Pawlowic interview, *supra* note 52.

64 Compare ASS'N OF LEGAL WRITING DIR., REPORT OF THE ANNUAL LEGAL WRITING SURVEY 1 (2001), [http://www.alwd.org/wp-content/uploads/2013/02/Segment4\\_2001\\_Survey.pdf](http://www.alwd.org/wp-content/uploads/2013/02/Segment4_2001_Survey.pdf) [<http://perma.cc/D7KJ-UNP2>] (7 of 127 survey responses report 405(c) status for full-time LRW faculty), with ASS'N OF LEGAL WRITING DIRECTORS, REPORT OF THE ANNUAL LEGAL WRITING SURVEY 63 (2013), <http://lwionline.org/uploads/FileUpload/2013SurveyReportfinal.pdf> [<http://perma.cc/H8XY-EMVJ>] (59 of 260 survey responses report 405(c) status, with another 18 reporting 405(c)-track status).

65 See *supra* note 37.

66 Shannon interview, *supra* note 51. Dean Dickerson began her legal academic career as a legal writing professor. Among her various accolades, she was the author of the first four editions of the *ALWD Citation Manual*. She was also dean at Stetson University College of Law when that school converted legal-writing faculty to clinical tenure-track status. Email from Darby Dickerson, Dean and W. Frank Newton Professor of Law, Tex. Tech Univ. Sch. of Law, to author (Mar. 8, 2015, 8:50 PM CST) (on file with author).

unwilling to add multiple tenure-track faculty lines.<sup>67</sup> Dean Dickerson's arrival at Texas Tech was contemporaneous with a change in leadership at the university, which facilitated transition planning.<sup>68</sup> Upon advocacy from Professor Soonpaa and the Legal Practice faculty, the dean established an ad-hoc Governance Committee to study the possibility and logistics of conversion.<sup>69</sup> (The committee ultimately drafted a Proposal to Convert Legal Practice/405(c) Positions to the Tenure Track, and once the Proposal was approved by the faculty, drafted the revised rules in the Faculty Handbook.) The dean lobbied the university president and provost about changing the university designation of the faculty slots from "instructor" to tenure-track.<sup>70</sup>

In making the case for conversion, Dean Dickerson and Professor Soonpaa were explicit about the importance of equal status for legal writing faculty and the message of equality that improved status would send to our students and to other law schools. The dean also stressed how converting the legal writing faculty would help address the significant gender imbalance of the faculty: before the conversion, only eight of thirty-one tenured and tenure-track faculty were female. After conversion, twelve of thirty-six were, increasing the female quotient from one-quarter to one-third.<sup>71</sup>

The dean also found the funding to make up the salary differences, even in a difficult economic climate, and she was vocal at the law school and the larger university that the money was there.<sup>72</sup> (A new university provost had also decentralized budget management decisions, allowing campus deans more autonomy over budget allocations.)<sup>73</sup>

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67 Shannon interview, *supra* note 51.

68 Shannon interview, *supra* note 51.

69 Soonpaa interview, *supra* note 51.

70 The conversion took place during several personnel transitions at the highest levels of the university, including the president and provost, and Dean Dickerson was able to leverage the time constraints of those expiring employment terms to advantage. See Governance Committee Proposal, *supra* note 51; Shannon interview, *supra* note 51.

71 Interestingly, the number of married women on the tenured and tenure-track faculty increased from one to four.

72 Lack of funding (or perceived lack of funding) to make up the salary difference between legal writing and tenure-track status had been a significant barrier to pursuing tenure-track status for legal writing faculty. Governance Committee Proposal, *supra* note 51.

73 Shannon interview, *supra* note 51.

This eliminated any argument that the legal writing faculty could not be converted to tenure-track because there was no budget for the increased salaries that would be required.<sup>74</sup>

In addition to the dean's and director's advocacy, there was a talented and committed group of legal writing professors already at the law school, all of whom were well-respected and well-integrated with the rest of the faculty.<sup>75</sup> Under Professor Soonpaa's direction, the Legal Practice program and curriculum had evolved to increase the robustness of the education while reinforcing the professionalism of each Legal Practice faculty member.<sup>76</sup>

Importantly, the existing legal writing faculty were not only teaching, serving on committees, and coaching advocacy teams, but most were publishing scholarly articles in well-ranked journals. These articles were on doctrinal subjects, based on the practice experience and personal interests of the faculty members: race and adoption,<sup>77</sup> scientific evidence and the Endangered Species Act,<sup>78</sup> and Bitcoin and money laundering.<sup>79</sup> These papers were all presented at symposia and invited talks. The legal writing faculty wrote and published these articles despite scholarship not being an express expectation of the position,<sup>80</sup> and despite receiving salaries that were slightly more than half what the doctrinal

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74 Generally speaking, tenure is an employment benefit that keeps salaries low: the job security it provides induces professors to take a lower salary than they might otherwise earn in law practice. Ehrenberg, *supra* note 26, at 104.

75 Pawlowic interview, *supra* note 52; Shannon interview, *supra* note 51; Soonpaa interview, *supra* note 51.

76 See Soonpaa interview, *supra* note 51. To give one example, each Legal Practice professor was encouraged to draft his or her own legal analysis assignments and fact patterns. Soonpaa interview, *supra* note 51. (Legal Practice professors do still generally coordinate the type of assignment and due dates for major assignments, so all first-year students at the law school have approximately the same workload throughout the year. The content of the assignments is per professor. So, for example, one section may be writing a memo on driving under the influence while another section is writing about conservatorship of a child, but both sections will hand in their final work product within a few days of each other, and they will have had about the same amount of time to work on the assignment.)

77 DeLeith Duke Gossett, *If Charity Begins at Home, Why Do We Go Searching Abroad? Why the Federal Adoption Tax Credit Should Not Subsidize International Adoptions*, 17 LEWIS & CLARK L. REV. 839, 839 (2013).

78 Brie D. Sherwin, *The Lizard, the Scientist, and the Lawmaker: An Analysis of the Trending Fight Over the Use of Science Under the Endangered Species Act and How to Address It*, 20 ANIMAL L. 357, 357 (2014).

79 Catherine Martin Christopher, *Whack-A-Mole: Why Prosecuting Digital Currency Exchanges Won't Stop Online Money Laundering*, 18 LEWIS & CLARK L. REV. 1, 1 (2014).

80 TEX. TECH UNIV. SCH. OF LAW, FACULTY HANDBOOK 41 (2013–14).

faculty earned. I believe the existence of our scholarship<sup>81</sup> was crucial to conversion: the legal writing faculty looked, walked, and quacked like ducks, so when the vote came before the faculty to begin calling us ducks, the choice seemed obvious.<sup>82</sup>

#### **IV. Lessons for Other Law Schools**

Hopefully, Texas Tech's conversion of legal writing faculty to tenure-track can provide lessons for other law faculties or constituencies contemplating similar conversion.

##### **A. Lessons for Deans**

Because of their authority over institutional administration and finances, status and salary equality for legal writing faculty cannot happen without action from the dean's office. Deans must lead the fight to convert 405(c) tracks to tenure-track lines. Deans must be the ones to make the case for status equality to law school faculties, boards of directors, and parent universities. Deans can make the necessary budget moves to fund improved salaries for these crucial faculty members.

Legal research and writing is the course that turns law students into employable attorneys. Deans can demonstrate a law school's commitment to the practical education of its students by showing the world that the institution values the professors who teach those skills. Deans can refuse to ghettoize their female workforces into inferior employment roles.

Untenured faculty members do not have the political capital to effect structural changes for themselves, and tenured faculty members alone cannot make such structural or financial decisions; deans must lead the charge.

##### **B. Lessons for Directors, Tenured, and Tenure-Track Faculty**

Legal writing directors and tenured faculty can also serve as advocates for legal writing faculty, lobbying deans and other colleagues about the importance of gender diversity and

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81 My colleagues and I continue to publish after our conversion to tenure-track status; for the purposes of this discussion, however, the foregoing footnotes cite only the legal scholarship produced prior to conversion.

82 This duck metaphor has been used before, notably by Jan M. Levine, Associate Dean for Teaching Excellence, Director of Legal Research and Writing, and Professor of Law at Duquesne University School of Law. Soonpaa interview, *supra* note 51.



equal status. When hiring new legal writing faculty, other faculty members should consider and prioritize hiring individuals who look, walk, and quack like ducks.

Tenured and tenure-track faculty who find themselves resistant to the idea of increasing the status of legal writing faculty should explore the reasons behind their resistance. Some questions to consider include:

- Is there gender bias at work in the law school's hiring and promotion decisions? Are female faculty held to unspoken but different standards? Are female faculty being held back because of a weak publication track record, while male faculty are hired and promoted based on potential?
- In what ways does the legal writing course differ from doctrinal courses? Do these differences justify the difference in treatment of the faculty? What characteristics of doctrinal faculty positions justify the salary and status afforded to those employees? How many of these characteristics are also applicable to legal writing positions?
- How have various faculty roles within the institution shaped the learning experiences of the students and alumni? Where differences between faculty roles are present, to what extent do those differences justify disparate treatment of the faculty members?
- Is the legal writing faculty producing scholarship? If not, why not? *Should* the legal writing faculty produce scholarship? What resources can and should be directed toward supporting their scholarship? What scholarship support is provided for tenured and tenure-track faculty, and can that support be extended to legal writing faculty?
- More broadly, what are the values of the law school? What skills and knowledge are essential to student learning? What makes the law school proud of its graduates? Is the law school investing its resources proportionately in the educational experiences it believes are valuable for its students?

### **C. Lessons for Legal Writing Faculty**

Legal writing faculty seeking to be put on the tenure track should publish. The primary rationale for tenure is to protect professors' ability to write provocative articles, so legal

writing faculty should do so.<sup>83</sup> Ideally, these articles would be on doctrinal subjects, rather than about teaching or legal writing,<sup>84</sup> and should be placed in well-regarded journals.

It will be easier for law faculties to convert the legal writing faculty to tenure-track if the legal writing faculty already behave like tenured and tenure-track faculty, engaging in teaching, service, and scholarship.

### CONCLUSION

Legal writing faculty deserve tenured status for a host of reasons: academic freedom, participation in law school governance, recognition of the importance of the subject matter they teach, and rectification of the historical sexism that segregated them from the rest of the faculty. It is my hope that Texas Tech's decision to convert its legal writing faculty to tenure-track positions will serve as an example and catalyst for other law schools to follow suit. In this way, law schools can take advantage of the gender diversity already in the building and progress toward equality among all faculty.

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83 It is unfortunate that men are often judged on their potential, while women are judged on their track records, *see supra* note 4, but legal writing faculty working within that reality may have to produce scholarship in order to prove that they can.

84 Just as legal writing has been historically perceived as *less-than*, so too has scholarship about teaching and legal writing.